

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2725 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HIRALAL PRANJIVANDAS RANA FRIEND OF DET MUKESHBHAI

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR HH PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City, Surat passed an order on 1st April 1999 in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act (for short PASA Act) detaining

Mukeshbhai Chandubhai Rana of House No. 3/3599, Ahmedavadi Sheri, Golwad, Navapura, Surat, under the provisions of PASA Act.

2. The grounds of detention indicate that the Detaining Authority took into consideration one prohibition case registered against the detenu. The Authority took into consideration the statements of two anonymous witnesses and came to the conclusion that the detenu is a bootlegger as defined under the PASA Act. The Detaining Authority also recorded a subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act. The Authority recorded that the fear expressed by the witnesses from the detenu was genuine and therefore the identity of the witnesses were required to be not disclosed in exercise of powers under Section 9(2) of the PASA Act. After considering the possibility of resorting to less drastic remedy the Detaining Authority ordered detention of the detenu under the provisions of PASA Act.

3. The petitioner a friend of the detenu challenges the order of detention on various counts.

4. Mr. Kapadia learned advocate appearing for the petitioner has pressed into service only one ground, namely improper exercise of powers under Section 9(2) of the PASA Act. He submitted that the statements of the witnesses were verified on 31-3-1999 and the order was passed on 1-4-1999, therefore there was no sufficient time lag between the two events which could have possibilsed for the Detaining Authority to record a genuine satisfaction for the need for exercise of powers under Section 9(2) of the Act. He relied on the decision of in K.C. Kahar v. State of Gujarat 1993(2) GLR 1659.

5. Mr. H.H. Patel, learned AGP has opposed this petition. He submitted that the quickness on the part of the Detaining Authority may not be taken as non application of mind.

6. The Detaining Authority has exercised the powers under Section 9(2) of the PASA Act and thereby has claimed privilege of not disclosing the identity of the witnesses. These powers are exercised by recording a subjective satisfaction that the statements made by these witnesses and the fear expressed by them qua the petitioner is found to be correct.

While exercising the powers under Section 9(2) of the PASA Act, the Detaining Authority has also to keep in

mind that exercise of powers under Section 9(2) of the PASA Act would deprive the detenu of his right of making an effective representation. He has therefore to consider as to what is to be given preference. Public interest and then exercise of powers under Section 9(2) of the PASA Act and the right of the detenu in exercise of powers under Section 9(2). Each case has to be judged on its own merits and the Detaining Authority has to strike a balance between the interest of the detenu on one hand and the public interest on the other.

For arriving at a subjective satisfaction the authority has to consider the truthfulness and genuineness of the fear expressed by the witnesses. The authority has also to take into consideration the material placed before it for exercising the powers both under Section 9(2) as well under Section 3(1) of the PASA Act. This entire exercise would require time. As it is seen in the instant case, the whole exercise was undertaken at one go in a single day, i.e. 1-4-1999.

7. In view of the decision in the case of Kalidas C. Kahar v. State of Gujarat 1993(2) GLR 1659, there was no time lag between the verification of the statements and the orders passed which could have possibilised for the Detaining Authority to undertake this exercise.

8. It is stated at the Bar by Mr. Kapadia that the detenu has been transferred from Junagadh prison to Central Prison, Sabarmati, Ahmedabad, and requests that the office may be directed to send the writ to Sabarmati prison.

9. The petition is therefore deserves to be allowed and same is hereby allowed. The detenu Mukeshbhai Chandubhai Rana of House No. 3/3599, Amdawadi Sheri, Golwad, Navapura, District Surat be set at liberty forthwith if not required in any other case. Writ to go to Sabarmati Jail. Rule is made absolute. No costs.

(A.L. Dave, J)